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UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF WASHINGTON

MYLA KURTZ, Individually and On  
Behalf of All Others Similarly Situated,

Plaintiff,

v.

REGIONALCARE HOSPITAL  
PARTNERS, INC. d/b/a RCCH  
HEALTHCARE PARTNERS, RCCH  
TRIOS HEALTH, LLC, RCCH TRIOS  
PHYSICIANS, LLC, and RCCH LLC,

Defendants.

NO.

**COMPLAINT FOR DAMAGES**

**(CLASS AND COLLECTIVE  
ACTION)**

**JURY TRIAL DEMANDED**

**INTRODUCTION**

1. Plaintiff Myla Kurtz (“Plaintiff”) brings this class and collective action on behalf of herself and other similarly situated individuals who have worked for RegionalCare Hospital Partners, Inc. d/b/a RCCH HealthCare Partners, RCCH Trios Health, LLC, RCCH Trios Physicians, LLC, and RCCH

1 LLC (collectively “Defendants” or “RCCH”) as nursing staff, nurse aides, nurse  
2 assistants, and other non-exempt hourly employees<sup>1</sup> and been subject to  
3 Defendants’ policy and practice of automatically deducting time from recorded  
4 hours for meal periods. Throughout the relevant time period, Plaintiff and  
5 similarly situated nursing staff have been denied payment for all hours worked,  
6 including overtime, and have been denied meal and rest periods that comply with  
7 Washington law. This case implicates the longstanding policy and practice of  
8 RCCH, which fails to properly compensate non-exempt employees for work  
9 performed during meal periods, for work performed while “off-the-clock,” and for  
10 missed rest and meal periods.

11 2. An employer is not required to pay employees for meal periods if the  
12 employer can satisfy its burden of demonstrating the employee received a *bona*  
13 *fide* meal period which primarily benefits the employee. Defendants do not  
14 provide bona fide meal periods for their nursing staff who are responsible for  
15 patient care. Nursing staff who work for Defendants are required to remain  
16 responsible for patient care throughout their shift and are expected to perform  
17 duties while “off-the-clock.” Instead of making nursing staff clock out for a meal

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18 <sup>1</sup> While the precise job titles may differ, Plaintiff hereinafter uses the term  
19 “nursing staff” interchangeably in referencing any of these similarly situated  
20 employees.  
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1 period and then clock back in at the end of the meal period, Defendants assume  
2 nursing staff were able to find a 30-minute block of time to enjoy a bona fide meal  
3 period. In fact, this does not typically occur. Nonetheless, Defendants deduct 30  
4 minutes from nursing staff shifts for a meal period, when in fact nursing staff  
5 remain on duty and are continuously subject to interruption during that time.  
6 Defendants have instituted policies and practices that result in nursing staff being  
7 responsible for patient care throughout their shift, even when they attempt to have  
8 a bite to eat.

9 3. Defendants' policies and practices result in nursing staff being denied  
10 wages due under the Fair Labor Standards Act and Washington law. Under these  
11 policies and practices, non-exempt nursing staff involved in patient care were not  
12 completely relieved of duties during meal periods and were denied pay for those  
13 on-duty meal periods. Defendants continue to require nursing staff responsible for  
14 patient care to remain on duty and subject to interruptions during meal breaks.

15 4. Defendants, including all of the hospital facilities under Defendants'  
16 ownership, management and control, violated the FLSA and Washington law by  
17 knowingly and willfully permitting Plaintiff and Collective and Class members to  
18 perform work and/or remain on duty during meal breaks, subjecting them to  
19 interruptions during those times. Plaintiff and Collective and Class members also  
20 performed work before clocking in and after clocking out for which they were not  
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1 compensated. Defendants had notice that Plaintiff and Collective and Class  
2 members expected to be paid for their work on an hourly basis. Defendants  
3 received value from the work performed by Plaintiff and Collective and Class  
4 members during their meal periods and while “off-the-clock” without  
5 compensating them for their services. Defendants willfully, deliberately, and  
6 voluntarily failed to pay Plaintiff and Collective and Class members for work  
7 performed.

8 5. Defendants’ conduct violated and continues to violate the FLSA  
9 because of the mandate that non-exempt employees, such as Plaintiff and the  
10 Collective members, be paid at one and one-half times their regular rate of pay for  
11 all hours worked in excess of forty within a single workweek. *See* 29 U.S.C. §  
12 207(a).

13 6. Defendants’ conduct violated and continues to violate Washington  
14 state law because the Washington Minimum Wage Act, chapter 49.46 RCW,  
15 requires employers to pay hourly employees like Plaintiff and the Washington  
16 Class members no less than the minimum wage for the first forty hours of work in  
17 a week and no less than one and one-half times the regular rate of pay for any  
18 hours worked in excess of forty in a week. Defendants’ conduct further violated  
19 and continues to violate Washington meal and rest period laws, Washington’s  
20 requirement that all wages be paid upon separation of employment, Washington’s  
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1 prohibition on unlawfully withholding wages, and Washington's recordkeeping  
2 requirements.

3 7. In addition, Plaintiff and Collective and Class members were and are  
4 required to work additional time outside of their scheduled shifts to keep up with  
5 the demands of the job. Defendants were and are aware that Plaintiff and  
6 Collective and Class members perform this off-the-clock work, but failed to pay  
7 them at the applicable hourly and overtime rates for this work time. This practice  
8 likewise violated and continues to violate the FLSA and Washington state law.

9 8. Defendants' conduct violated and continues to violate Washington's  
10 meal and rest period laws and final pay statute. Because Defendants' conduct  
11 violated and continues to violate Washington wage and hour laws, Defendants are  
12 liable for unpaid and exemplary wages as provided by Washington law, attorneys'  
13 fees and costs, and pre- and post-judgment interest.

14 9. Therefore, Plaintiff files this action to recover on behalf of herself and  
15 Collective and Class members all unpaid wages, compensation, penalties, and  
16 other damages owed to them under the FLSA and state law individually, as a 29  
17 U.S.C. § 216(b) collective action, and as a class action under Federal Rule of Civil  
18 Procedure 23, in order to remedy the sweeping practices which Defendants have  
19 integrated into their time tracking and payroll policies and which have deprived  
20 Plaintiff and Collective and Class members of their lawfully-earned wages.  
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1                   **SUBJECT MATTER JURISDICTION AND VENUE**

2           10.    This court has federal question jurisdiction over the subject matter of  
3 this action pursuant to 28 U.S.C. § 1331 as this case is brought under the laws of  
4 the United States, specifically the FLSA, 29 U.S.C. § 201, *et seq.* This Court has  
5 supplemental jurisdiction over Plaintiff's state-law claims pursuant to 28 U.S.C. §  
6 1367.

7           11.    Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391.  
8 The events giving rise to Plaintiff's claims occurred within this judicial district.  
9 Defendants reside in this judicial district and are subject to personal jurisdiction  
10 here.

11                   **PARTIES**

12           12.    Plaintiff Myla Kurtz is an individual residing in Stanfield, Oregon.  
13 Ms. Kurtz was employed as a nurse by Defendants in Kennewick, Washington at  
14 the Trios Southridge Hospital location.

15           13.    The FLSA Collective members are people who are or who have been  
16 employed by Defendants as nursing staff, nurse aides, nurse assistants, and other  
17 similar hourly and non-exempt employees in the United States that have been  
18 subject to an automatic time deduction by Defendants within the three years  
19 preceding the filing of this Complaint (collectively referred to herein as "nursing  
20 staff").  
21

1           14. The Washington Class members are all people who are or who have  
2 been employed by Defendants as nursing staff, nurse aides, nurse assistants, and  
3 other similar hourly and non-exempt employees in the State of Washington that  
4 have been subject to an automatic time deduction by Defendants within the four  
5 years preceding the filing of this Complaint (collectively referred to herein as  
6 “nursing staff”).

7           15. Defendant RegionalCare Hospital Partners, Inc. is a foreign  
8 corporation, with its principal office located at 103 Continental Place, Suite 200,  
9 Brentwood, Tennessee 37027. Upon information and belief, Defendants below are  
10 all subsidiaries or affiliates of RegionalCare Hospital Partners, Inc.

11           16. Defendant RCCH Trios Health, LLC, is a foreign limited liability  
12 company, with its principal office located at 1209 North Orange Street,  
13 Wilmington, Delaware 19801-1120. Defendant may be served with process by  
14 serving its registered agent, C T Corporation System, at 711 Capitol Way South,  
15 Suite 204, Olympia, Washington 98501.

16           17. Defendant RCCH Trios Physicians, LLC is a foreign limited liability  
17 company, with its principal office located at 1209 North Orange Street,  
18 Wilmington, Delaware 19801-1120. Defendant may be served with process by  
19 serving its registered agent, C T Corporation System, at 711 Capitol Way South,  
20 Suite 204, Olympia, Washington 98501.

1           18. Defendant RCCH LLC is a domestic limited liability company.  
2 Defendant may be served with process by serving its registered agent, Erik  
3 Cadwell, at 2798 Paul Benjamin Road, Bremerton, Washington 98312.

4           19. Upon information and belief, Trios Southridge Hospital in  
5 Kennewick, Washington, is owned and operated by Defendants RCCH Trios  
6 Health, LLC, RCCH Trios Physicians, LLC, and RCCH LLC

7           20. At all material times, Defendants have been employers within the  
8 meaning of the FLSA under 29 U.S.C. § 203(d).

9           21. At all material times, Defendants have been an enterprise within the  
10 meaning of the FLSA under 29 U.S.C. § 203(r).

11           22. Plaintiff and Collective and Class members were and are employees  
12 of Defendants within the meaning of 29 U.S.C. § 203(e).

13           23. At all material times, Defendants have been an enterprise in  
14 commerce or in the production of goods for commerce within the meaning of  
15 section 3(s)(1) of the FLSA because Defendants have had and continue to have  
16 employees engaged in commerce. 29 U.S.C. § 203(s)(1).

17           24. Defendants acted as joint employers of Plaintiff and Collective and  
18 Class members because all Defendants jointly, directly or indirectly, controlled  
19 the employment terms, pay practices, timekeeping practices, and daily work of  
20 Plaintiff and similarly situated employees.  
21





1 automatically deduct 30 minutes from nursing staff shifts for a meal period.  
2 However, in practice, nursing staff remain on duty and are continuously subject to  
3 interruption during that time. This policy applies to all hourly-paid, non-exempt  
4 nursing staff who are responsible for patient care.

5 31. Nursing staff involved in patient care are not permitted to take a 30-  
6 minute uninterrupted and bona fide meal period or rest breaks due to the demands  
7 of their jobs during the majority of their shifts. In the rare instances where they  
8 attempt a meal period or rest break, they remain on duty in that they are required  
9 to respond to calls from their patients, doctors, patients' families, other nursing  
10 staff and hospital staff, attend to the normal demands of the job, and otherwise  
11 respond to emergencies.

12 32. Defendants encourage interruptions to nursing staff meal periods and  
13 rest breaks by requiring nursing staff to carry an electronic communication device  
14 with them at all times, so that they may receive calls/requests from their patients  
15 and hospital personnel. Nursing staff are required to respond to these calls, even if  
16 they are taking a meal period or rest break.

17 33. Plaintiff was employed by Defendants as a registered nurse in the  
18 Trios Southridge Hospital location during the last four years. Plaintiff worked as a  
19 non-exempt nurse for Defendants between July 1999 through November 2018,  
20 and her regular hourly rate of pay was approximately \$47 per hour during the last  
21

1 year of her employment. As a nurse, Plaintiff's primary responsibilities included:  
2 providing patient care and monitoring, administering medicine to patients,  
3 interacting with other hospital employees and visitors, monitoring blood-work and  
4 patient test results, and responding to emergency situations. Plaintiff was  
5 subjected to Defendants' time, pay, meal break, and overtime policies and  
6 practices. Plaintiff routinely performed work during her entire shift, was subject to  
7 interruptions during attempted meal and rest breaks, and in fact was interrupted or  
8 denied meal and rest breaks on a regular basis. Plaintiff also performed work  
9 while "off-the-clock" with Defendant's knowledge and was denied compensation  
10 for the time she spent engaged in this work.

11 34. Plaintiff's and Collective and Class members' "off-the-clock" work  
12 included cleaning, preparing and organizing equipment, interacting with patients  
13 and patients' family members, assisting other hospital staff, charting, and  
14 performing other various tasks before clocking in and after clocking out for the  
15 day. Plaintiff and Collective and Class members were not compensated for this  
16 work performed outside of their recorded hours.

17 35. Collective and Class members were and are employed by Defendants  
18 and performed work materially similar to Plaintiff.

19 36. Plaintiff and Collective and Class members reported to a hospital or  
20 clinical facility owned, operated, or managed by Defendants to perform their jobs.  
21

1           37. Plaintiff and Collective and Class members performed their jobs  
2 under Defendants' supervision and using materials and technology approved and  
3 supplied by Defendants.

4           38. Plaintiff and Collective and Class members were required to follow  
5 and abide by common work, time, pay, meal and rest break, and overtime policies  
6 and procedures in the performance of their jobs.

7           39. At the end of each pay period, Plaintiff and Collective and Class  
8 members received wages from Defendants that were determined by common  
9 systems and methods that Defendants selected and controlled.

10          40. Defendants paid Plaintiff and Collective and Class members on an  
11 hourly rate basis.

12          41. Plaintiff worked more than forty hours in at least one workweek  
13 during the three years before this Complaint was filed. On average, Plaintiff  
14 worked 12 to 13 hours each shift and between three-to-four shifts per week. On  
15 average, Plaintiff worked more than 40 hours in a workweek at least two times per  
16 month.

17          42. Upon information and belief each Collective member worked more  
18 than forty hours in at least one workweek during the three years before this  
19 Complaint was filed.

1           43. When Plaintiff and Collective members worked more than forty hours  
2 in a workweek, Defendants failed to pay them one and one-half times their regular  
3 hourly rate due to Defendants' failure to include time worked during meal periods  
4 and "off-the-clock" work in the total hours of worked in a given work week. This  
5 unpaid time is compensable under the FLSA because (1) Plaintiff and Collective  
6 members were not completely relieved of their duties, (2) they were interrupted or  
7 subject to interruptions with work duties during any attempted meal period, or (3)  
8 they entirely skipped meal periods due to work demands.

9           44. When Plaintiff and Class members performed work, Defendants failed  
10 to pay them minimum and overtime wages due to Defendants' failure to include  
11 time worked during meal periods, rest periods, and "off-the-clock" work. This  
12 unpaid time is compensable under Washington law because (1) Plaintiff and Class  
13 members were not completely relieved of their duties, (2) they were interrupted or  
14 subject to interruptions with work duties during any attempted meal or rest period,  
15 or (3) they entirely skipped meal and rest periods due to work demands.

16           45. Throughout the relevant time period, Defendants expected and  
17 required Plaintiff and Collective and Class members to be available to work  
18 during their entire shifts, even during any attempted meal breaks. These 30-minute  
19 intervals of deducted time constitute compensable time under the FLSA which  
20 requires that employers compensate employees for all time worked. The intervals  
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1 also constitute compensable time under Washington law because WAC 296-126-  
2 092 requires that employees shall be allowed a meal period of at least 30 minutes  
3 which commences no less than two hours nor more than five hours from the  
4 beginning of the shift. *See* WAC 296-126-092(1). Meal periods shall be on the  
5 employer's time when the employee is required by the employer to remain on  
6 duty on the premises or at a prescribed work site in the interest of the employer.  
7 *Id.* No employee shall be required to work more than five consecutive hours  
8 without a meal period. *See* WAC 296-126-092(2).

9 46. Throughout the relevant time period, Defendants expected and  
10 required Plaintiff and Class members to be available to work during their entire  
11 shifts, even during attempted rest breaks. Missed rest break time is compensable  
12 under Washington law because WAC 296-126-092 requires that employees shall  
13 be allowed a rest period of at least 10 minutes on the employer's time for every  
14 four hours of work. *See* WAC 296-126-092(4). Rest periods shall be scheduled as  
15 near as possible to the midpoint of the work period. *Id.* No employee shall be  
16 required to work more than three hours without a rest period. *Id.* Under  
17 Washington law, rest breaks may not be waived by employees. *See Pellino v.*  
18 *Brink's Inc.*, 164 Wn. App. 668, 688, 267 P.3d 383 (2011) (stating that  
19 "employers have a duty to provide meal periods and rest breaks and to ensure the  
20 breaks comply with the requirements of WAC 296-126-092.").

1           47. Employers have a “mandatory obligation” to both “provide” meal and  
2 rest breaks and “ensure” the breaks comply with the law. *Chavez v. Our Lady of*  
3 *Lourdes Hosp. at Pasco*, 190 Wn.2d 507, 519, 415 P.3d 224 (2018); *Brady v.*  
4 *AutoZone Stores, Inc.*, 188 Wn.2d 576, 584, 397 P.3d 120 (2017).

5           48. Defendants have employed hundreds of people similarly situated to  
6 Plaintiff during the three-year period prior to the filing of this Complaint.

7           49. Defendants’ method of paying Plaintiff and Collective and Class  
8 members was willful, and was not based on a good faith and reasonable belief that  
9 their conduct complied with either the FLSA or Washington law. Upon  
10 information and belief, Defendants have previously entered into a collective  
11 bargaining agreement which requires Defendants to comply with all applicable  
12 federal and state laws, which includes wage and hour laws.

13           50. Defendants’ common course of wage-and-hour abuse includes  
14 routinely failing to maintain true and accurate records of the hours worked by  
15 Collective and Class members. In particular, Defendants have failed to record  
16 hours that Plaintiff and Collective and Class members worked during missed meal  
17 and rest breaks as well as hours worked off the clock.

18                   **FLSA COLLECTIVE ACTION ALLEGATIONS**

19           51. Plaintiff brings this Complaint as a collective action pursuant to 29  
20 U.S.C. § 216(b) on behalf of the following class of individuals:  
21

1 All current and former hourly, non-exempt employees,  
2 including but not limited to nursing staff, nursing aides,  
3 nursing assistants or other employees with similar job  
4 duties employed by Defendants nationwide and subjected  
5 to an automatic time deduction policy and practice during  
the time period three years prior to the filing of the  
original Complaint until resolution of this action (the  
“Collective”).

6 52. Defendants have not compensated these employees for the unpaid  
7 meal breaks and “off-the-clock” work as described above.

8 53. Per 29 U.S.C. § 216(b), this action may be brought as an “opt-in”  
9 collective action for the claims asserted by Plaintiff because her claims are similar  
10 to the claims possessed by the Collective members.

11 54. Plaintiff has actual knowledge that Collective members have been  
12 denied compensation for time worked, including meal breaks worked or  
13 interrupted and “off-the-clock” work. In addition, Plaintiff has actual knowledge  
14 that Collective members have also been denied overtime pay for this work and  
15 would therefore likely join this collective action if provided a notice of their rights  
16 to do so, together with a clear statement that opting to join such an action would  
17 not result in termination or other forms of retaliation.

18 55. Plaintiff is similarly situated to Collective members. Like Plaintiff,  
19 Defendants subjected Collective members to its common practice, policy, or plan  
20 of refusing to pay overtime for all work performed in clear violation of the FLSA.  
21



1           56. Other nursing staff similarly situated to Plaintiff work, or have  
2 worked, for Defendants but were not paid overtime at the rate of one and one-half  
3 times their regular hourly rate when those hours exceeded forty per workweek for  
4 meal breaks during which they were not completely relieved of their duties that  
5 were interrupted, interruptible, or entirely missed due to work demands. Other  
6 nursing staff similarly situated to Plaintiff also performed compensable work  
7 while “off-the-clock,” and were not paid overtime at the rate of one and one-half  
8 times their regular hourly rate for those “off-the-clock” hours.

9           57. Although Defendants permitted and/or required Collective members  
10 to work in excess of forty hours per workweek, Defendants have denied them full  
11 compensation for their hours worked over forty for meal breaks that were  
12 interrupted due to work demands and for “off-the-clock” work.

13           58. Collective members perform or have performed the same or similar  
14 work as Plaintiff involving patient care.

15           59. Collective members regularly work or have worked in excess of forty  
16 hours during a workweek.

17           60. Collective members are not exempt from receiving overtime  
18 compensation under the FLSA.

1           61. Defendants' failure to pay overtime compensation as required by the  
2 FLSA resulted from generally applicable policies and practices, and did not  
3 depend on the personal circumstances of FLSA Collective members.

4           62. Although Plaintiff and Collective members may have different job  
5 titles and/or work in different hospital facilities, this action may be properly  
6 maintained as a collective action on behalf of the defined class because,  
7 throughout the relevant time period:

8           a. Defendants maintained common scheduling systems and policies  
9 with respect to Plaintiff and Collective members, controlled the  
10 scheduling systems and policies implemented throughout their  
11 facilities and retained authority to review and revise or approve the  
12 schedules assigned to Plaintiff and Collective members;

13           b. Defendants maintained common timekeeping systems and policies  
14 with respect to Plaintiff and Collective members;

15           c. Defendants maintained common payroll systems and policies with  
16 respect to Plaintiff and Collective members, controlled the payroll  
17 systems and policies applied to Plaintiff and Collective members,  
18 and set the pay rates assigned to Plaintiff and Collective members;  
19 and  
20  
21

1 d. Defendants controlled the meal break and rest break work policies  
2 and practices at issue in this litigation and had the ability to deprive  
3 Plaintiff and Collective members of wages owed for meal break  
4 and rest break work they performed.

5 63. The specific job titles or precise job responsibilities of each Class  
6 member does not prevent collective treatment.

7 64. Collective members, irrespective of their particular job requirements,  
8 are entitled to overtime compensation for hours worked in excess of forty during a  
9 workweek, including for interrupted, on-duty, or missed meal breaks.

10 65. Collective Members, irrespective of their particular job requirements,  
11 are entitled to overtime compensation for hours worked “off-the-clock” in excess  
12 of forty during a workweek.

13 66. Although the exact amount of damages may vary among Collective  
14 members, the damages for Collective members can be easily calculated, summed,  
15 and allocated based on a simple formula.

16 67. Plaintiff and Collective members’ claims arise from a common  
17 nucleus of operative facts; namely, the continued and willful failure of Defendants  
18 to comply with their obligation to legally compensate their employees. Liability is  
19 based on a systematic course of wrongful conduct by Defendants that caused harm  
20 to all Collective members. Defendants had a plan, policy or practice of not paying  
21

1 Plaintiff and Collective members for interrupted, interruptible, or missed meal and  
2 rest breaks, as well as work performed “off-the-clock.”

3 68. As such, the class of similarly situated Plaintiffs is properly defined as  
4 stated above. Plaintiff estimates the Collective, including both current and former  
5 employees over the relevant time period, will include upwards of 1,000 people or  
6 more. The precise number of Collective members should be readily available from  
7 Defendants’ personnel, scheduling, time and payroll records, and from input  
8 received from Collective members as part of the notice and “opt-in” process  
9 provided by 29 U.S.C. § 216(b). The names and addresses of the Collective  
10 members are discoverable from Defendants’ records. Given the composition and  
11 size of the Class, notice may be provided via First Class Mail, e-mail, text  
12 message, and other modes of notice similar to those customarily used in  
13 representative actions.

14 **RULE 23 CLASS ACTION ALLEGATIONS**

15 69. Plaintiff brings causes of action as a class action on behalf of herself  
16 and all others similarly situated pursuant to Federal Rule of Civil Procedure 23(a)  
17 and (b)(3). The Washington Class that Plaintiff seeks to represent is defined as  
18 follows:

19 All current and former hourly, non-exempt employees,  
20 including but not limited to nursing staff, nursing aides,  
21 nursing assistants, or other employees with similar job

1 duties employed by Defendants in Washington and  
2 subjected to an automatic time deduction policy and  
3 practice at any time starting four years prior to the filing  
4 of this Complaint until resolution of this action.

5 70. This action has been brought and may properly be maintained as a  
6 class action because there is a well-defined community of interest in the litigation  
7 and the proposed class is easily ascertainable.

8 71. Numerosity: The potential members of the class are so numerous that  
9 joinder of all the members of the Class is impracticable. Plaintiff is informed and  
10 believes that the number of Washington Class members exceeds 40. This volume  
11 makes bringing the claims of each individual member of the class before this  
12 Court impracticable. Likewise, joining each individual member of the Washington  
13 Class as a plaintiff in this action is impracticable. Furthermore, the identities of  
14 the Washington Class will be determined from Defendants' records, as will the  
15 compensation paid to each of them. As such, a class action is a reasonable and  
16 practical means of resolving these claims. To require individual actions would  
17 prejudice the Washington Class and Defendants.

18 72. Commonality: There are questions of law and fact common to  
19 Plaintiff and the Washington Class that predominate over any questions affecting  
20 only individual members of the Class. These common questions of law and fact  
21 include, but are not limited to:

- i. Whether Defendants paid Plaintiff and Washington Class members on an hourly basis;
- ii. Whether Defendants failed to keep true and accurate records of employees' hours of work and wages;
- iii. Whether Defendants failed to provide Plaintiff and Washington Class members with uninterrupted meal periods to which they were entitled under Washington law and ensure those breaks were taken;
- iv. Whether Defendants have engaged in a policy and practice of automatic time deductions for meal periods that were not bona fide, continuous, and uninterrupted meal periods violated Washington law;
- v. Whether the nature of the duties of Plaintiff and Washington Class members did not allow them to take intermittent rest periods equivalent to ten minutes for each four hours worked;
- vi. Whether Defendants failed to provide Plaintiff and Washington Class members with uninterrupted rest breaks to which they were entitled under Washington law and ensure those breaks were taken;

- vii. Whether Defendants failed to put a system in place that would allow Plaintiff and Washington Class members to record missed meal and rest breaks;
- viii. Whether Defendants failed to compensate Plaintiff and Washington Class members for missed meal and rest breaks;
- ix. Whether Defendants knew or had reason to know that Plaintiff and Washington Class members were requested, suffered, permitted or allowed to work hours off the clock;
- x. Whether Defendants failed to pay Plaintiff and Washington Class members at no less than the minimum wage for all hours worked, including hours worked during missed meal and rest breaks and hours worked off the clock;
- xi. Whether Defendants failed to pay Plaintiff and Washington Class members at an overtime rate for all hours worked in excess of forty in a workweek, including hours worked during missed meal and rest breaks and hours worked off the clock;
- xii. Whether Defendants failed to provide Plaintiff and Washington Class members with timely, accurate itemized wage statements in violation of Washington law;

1                   xiii. Whether Defendants’ policy and practice of failing to pay  
2                   Plaintiff and Washington Class members all wages due upon  
3                   the end of their employment violated Washington law;

4                   xiv. Whether Defendants’ actions were “willful” as that term is  
5                   understood in Washington wage and hour law;

6                   xv. Whether Defendants’ common course of conduct violated  
7                   RCW 49.12.020;

8                   xvi. Whether Defendants’ common course of conduct violated  
9                   WAC 296-126-092;

10                  xvii. Whether Defendants’ common course of conduct violated  
11                  RCW 49.46.020;

12                  xviii. Whether Defendants’ common course of conduct violated  
13                  RCW 49.46.090;

14                  xix. Whether Defendants’ common course of conduct violated  
15                  RCW 49.46.130;

16                  xx. Whether Defendants’ common course of conduct violated  
17                  RCW 49.52.050;

18                  xxi. Whether Defendants’ common course of conduct violated  
19                  RCW 296-128-010;



xxii. Whether Defendants' common course of conduct violated RCW 296-126-040; and

xxiii. The proper formula for calculating actual and exemplary damages owed to Plaintiff and the Washington Class as alleged herein.

73. Typicality: Plaintiff's claims are typical of the claims of the Washington Class. Defendants' common course of conduct in violation of law as alleged herein caused Plaintiff and Washington Class members to sustain the same or similar injuries and damages. Plaintiff's claims are thereby representative of and co-extensive with the claims of the Washington Class.

74. Adequacy of Representation: Plaintiff seeks relief for state law violations perpetrated by Defendants. In that sense, Plaintiff does not have any conflicts of interest with other Washington Class members and will prosecute the case vigorously on behalf of the Washington Class. Counsel representing Plaintiff is competent and experienced in litigating complex cases and large class actions, including wage and hour cases. Plaintiff will fairly and adequately represent and protect the interests of the Washington Class members.

75. Superiority of Class Action: A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all proposed Washington Class members is not practicable,

1 and questions of law and fact common to the Washington Class predominate over  
2 any questions affecting only individual members of the Washington Class. Each  
3 proposed Washington Class member has been damaged and is entitled to recovery  
4 by reason of Defendants' illegal policies and/or practices. Class action treatment  
5 will allow those similarly situated persons to litigate their claims in the manner  
6 that is most efficient and economical for the parties and the judicial system.

7 76. In the alternative, the Washington Class may be certified because the  
8 prosecution of separate actions by the individual members of the Washington  
9 Class would create a risk of inconsistent or varying adjudication with respect to  
10 individual members of the Washington Class which would establish incompatible  
11 standards of conduct for Defendants.

12 77. If each individual Washington Class member were required to file an  
13 individual lawsuit, Defendants would necessarily gain an unconscionable  
14 advantage because Defendants would be able to exploit and overwhelm the  
15 limited resources of each member of the Washington Class with Defendants'  
16 vastly superior financial legal resources.

17 78. Requiring each individual Washington Class member to pursue an  
18 individual remedy would also discourage the assertion of lawful claims by the  
19 Washington Class members who would be disinclined to pursue these claims  
20  
21

1 against Defendants because of an appreciable and justifiable fear of retaliation and  
2 permanent damage to their lives, careers and well-being.

3 **FIRST CLAIM FOR RELIEF**  
4 **VIOLATIONS OF 29 U.S.C. § 207**

5 **COUNT ONE**  
6 **FAILURE TO PAY OVERTIME COMPENSATION FOR**  
7 **IMPROPER AUTOMATIC TIME DEDUCTIONS**  
8 **(FLSA COLLECTIVE ACTION)**

9 79. Plaintiff incorporates all allegations contained in the foregoing  
10 paragraphs.

11 80. Plaintiff and Collective members, Defendants' employees, are  
12 similarly situated individuals within the meaning of the FLSA, 29 U.S.C. §  
13 216(b).

14 81. The FLSA requires each covered employer to compensate all non-  
15 exempt employees at a rate of not less than one and one-half times their regular  
16 hourly rate for all hours worked in excess of forty hours per week.

17 82. Throughout the relevant time period, Defendants expected and  
18 required Plaintiff and Collective members to be available to work and/or to be on  
19 duty during their promised meal and rest breaks. Plaintiff and Collective members  
20 also performed work off-the-clock for which they were not compensated.

21 83. Plaintiff and Collective members have been harmed as a direct and  
proximate result of Defendants' unlawful conduct because they have been

1 deprived of wages owed for work they performed and from which Defendants  
2 derived a direct and substantial benefit.

3 84. Defendants cannot satisfy their burden of proof to demonstrate  
4 Plaintiff and Collective members received a bona fide meal period for every 30  
5 minutes deducted from their wages automatically.

6 85. Defendants violated and continue to violate the FLSA when they  
7 failed to pay Plaintiff and Collective members for meal breaks under 29 U.S.C. §  
8 207 as non-exempt employees. Because of these violations, Plaintiff and  
9 Collective members have suffered a loss of wages.

10 86. Defendants' failure to pay overtime to Plaintiff and Collective  
11 members, in violation of the FLSA, was willful and not based on a good-faith  
12 belief that their conduct did not violate the FLSA. The foregoing conduct, as  
13 alleged, constitutes a willful violation of the FLSA within the meaning of 29  
14 U.S.C. § 255(a). Accordingly, a three-year limitations period should apply to  
15 Plaintiff and Collective members' claims.

16 87. Because of Defendants' willful violation, Plaintiff and Collective  
17 members are also due an additional equal amount as liquidated damages pursuant  
18 to 29 U.S.C. § 216(b).

19 88. Plaintiff and Collective members are further entitled to reasonable  
20 attorneys' fees and costs of the action in addition to any judgment awarded.  
21

**COUNT TWO:  
FAILURE TO PAY OVERTIME COMPENSATION FOR “OFF-THE-  
CLOCK” WORK  
(FLSA COLLECTIVE ACTION)**

89. Plaintiff incorporates all allegations contained in the foregoing paragraphs.

90. Throughout the relevant time period, Defendants suffered and/or permitted Plaintiff to work additional time outside of her shift for work-related tasks. These tasks included, but were not limited to, checking on patients, locating and gathering equipment and supplies, responding to emergencies, reviewing or completing charting, and cleaning.

91. Plaintiff was actively discouraged from logging time outside the parameters set by Defendants. However, due to the demands of the job, Plaintiff routinely performed work-related tasks outside of her scheduled shift, before she clocked in and after she clocked out. Upon information and belief, Defendants treated Collective members similarly with respect to “off-the-clock” work.

92. Accordingly, consistent with the policies and procedures set up by Defendants, Plaintiff performed work for which she was not compensated. Defendants’ policies and practices favored Defendants at the expense of Plaintiff and Collective members.

93. Defendants violated and continue to violate the FLSA when they failed to pay Plaintiff and Collective members for “off-the-clock” work under 29

1 U.S.C. § 207 as a non-exempt employee. Because of these violations, Plaintiff and  
2 Collective members suffered wage losses during weeks where the total time  
3 worked (logged and unlogged) exceeded forty hours.

4 94. Defendants' failure to pay overtime to Plaintiff and Collective  
5 members, was willful and not based on a good-faith belief that their conduct did  
6 not violate the FLSA. The foregoing conduct, as alleged, constitutes a willful  
7 violation of the FLSA within the meaning of 29 U.S.C. § 255(a). Accordingly, a  
8 three-year limitations period should apply to Plaintiff and Collective members'  
9 claims.

10 95. Because of Defendants' willful violation, Plaintiff and Collective  
11 members are also due an additional equal amount as liquidated damages pursuant  
12 to 29 U.S.C. § 216(b).

13 96. Plaintiff and Collective members are further entitled to reasonable  
14 attorneys' fees and costs of the action in addition to any judgment awarded.

15 **SECOND CLAIM FOR RELIEF**  
16 **VIOLATIONS OF RCW 49.46.130**  
17 **FAILURE TO PAY OVERTIME**  
**(WASHINGTON CLASS ACTION)**

18 97. Plaintiff incorporates all allegations contained in the foregoing  
19 paragraphs.

20 98. Pursuant to RCW 49.46.130(1), Defendants were required to pay  
21 Plaintiff and Washington Class members no less than minimum wage for each of

1 the first forty hours worked in a week and one and one-half times their regular rate  
2 of pay for all hours worked in excess of forty in a given workweek, when those  
3 wages were due, but willfully failed to do so.

4 99. RCW 49.46.090(1) states that:

5 Any employer who pays any employee less than the  
6 amounts to which such employee is entitled under or by  
7 virtue of this chapter, shall be liable to such employee  
8 affected for the full amount due to such employee under  
9 this chapter, less any amount actually paid to such  
10 employee by the employer, and for costs and such  
11 reasonable attorney's fees as may be allowed by the court.  
12 Any agreement between such employee and the employer  
13 allowing the employee to receive less than what is due  
14 under this chapter shall be no defense to such action.

15 100. Class members are entitled to recover unpaid overtime under  
16 Washington law.

17 101. Plaintiff and Washington Class members who are within the  
18 applicable three-year statute of limitations for this claim are entitled to collect the  
19 difference between wages received then due and the overtime wages due in an  
20 amount to be determined at trial, together with attorney fees, costs and  
21 disbursements (RCW 49.46.090; RCW 49.48.030), as well as pre- and post-  
judgment interest at the rate of 12% per annum (RCW 19.52.020).

**THIRD CLAIM FOR RELIEF  
VIOLATIONS OF RCW 49.12.020 AND WAC 296-126-092  
FAILURE TO PROVIDE MEAL AND REST BREAKS AND ENSURE  
THOSE BREAKS ARE TAKEN  
(WASHINGTON CLASS ACTION)**

102. Plaintiff incorporates all allegations contained in the foregoing paragraphs.

103. RCW 49.12.010 provides:

The welfare of the state of Washington demands that all employees be protected from conditions of labor which have a pernicious effect on their health. The state of Washington, therefore, exercising herein its police and sovereign power declares that inadequate wages and unsanitary conditions of labor exert such pernicious effect.

104. RCW 49.12.020 provides that “[i]t shall be unlawful to employ any person in any industry or occupation within the state of Washington under conditions of labor detrimental to their health.”

105. Pursuant to RCW 49.12.005(5) and WAC 296-126-002(9), conditions of labor “means and includes the conditions of rest and meal periods” for employees.

106. WAC 296-126-092 provides:

(1) Employees shall be allowed a meal period of at least thirty minutes which commences no less than two hours nor more than five hours from the beginning of the shift. Meal periods shall be on the employer’s time when the employee is required by the employer to remain on duty on the premises or at a prescribed work site in the interest of the employer.



1  
2 (2) No employee shall be required to work more than five  
consecutive hours without a meal period.

3 (3) Employees working three or more hours longer than a  
4 normal work day shall be allowed at least one thirty-  
minute meal period prior to or during the overtime period.

5 (4) Employees shall be allowed a rest period of not less than  
6 ten minutes, on the employer's time, for each four hours of  
7 working time. Rest periods shall be scheduled as near as  
possible to the midpoint of the work period. No employee  
8 shall be required to work more than three hours without a  
rest period.

9 (5) Where the nature of the work allows employees to take  
intermittent rest periods equivalent to ten minutes for each  
10 four hours worked, scheduled rest periods are not required.

11 107. Defendants implemented a policy and practice of automatically  
12 deducting 30-minutes from Plaintiff and Washington Class members' time for  
13 each shift worked, even though Plaintiff and Washington Class members were still  
14 on-duty, subject to interruption, and often were interrupted during their meal  
breaks.

15 108. Because Plaintiff and Washington Class members were not relieved of  
16 all duties during but were subject to interruption and thus failed to receive  
17 continuous meal breaks, Defendants' automatic time deduction for meal periods  
18 was and is in violation of WAC 296-126-092.

19 109. Because Plaintiff and Washington Class members were constantly  
20 engaged in work activities during meal break times, they are entitled to be  
21

1 compensated 30 minutes for each automatic time deduction as well as 30 minutes  
2 for each missed meal break.

3 110. Because Plaintiff and Washington Class members have failed to  
4 receive the rest breaks to which they were entitled, Defendants have violated  
5 WAC 296-126-092.

6 111. Because Plaintiff and Washington Class members were constantly  
7 engaged in work activities during their paid rest breaks in violation of WAC 296-  
8 126-092, Plaintiff and Washington Class members are entitled to be compensated  
9 10 minutes each for each missed rest break. *See Washington State Nurses Ass'n v.*  
10 *Sacred Heart Med. Ctr.*, 175 Wn.2d 822, 287 P.3d 516 (2012).

11 112. When the owed rest and meal break time owed combined with other  
12 hours worked takes them beyond forty hours for the week, Plaintiff and  
13 Washington Class members are entitled to recover wages at their one and one-half  
14 times their regular hourly rate for all time owed by Defendants for missed rest and  
15 meal breaks.

16 113. As a result of these unlawful acts, Plaintiff and the Washington Class  
17 have been deprived of compensation in amounts to be determined at trial, and  
18 Plaintiff and the Washington Class are entitled to the recovery of such damages,  
19 together with attorney fees, costs and disbursements (RCW 49.12.150; RCW  
20  
21

1 49.48.030), as well as pre- and post-judgment interest at the rate of 12% per  
2 annum (RCW 19.52.020).

3 **FOURTH CLAIM FOR RELIEF**  
4 **VIOLATIONS OF RCW 49.46.090**  
5 **FAILURE TO PAY MINIMUM WAGES FOR**  
6 **ALL HOURS WORKED**  
7 **(WASHINGTON CLASS ACTION)**

8 114. Plaintiff incorporates all allegations contained in the foregoing  
9 paragraphs.

10 115. Under RCW 49.46.090, employers must pay employees all wages to  
11 which they are entitled under the Washington Minimum Wage Act. If the  
12 employer fails to do so, RCW 49.46.090 requires that the employer pay the  
13 employees the full amount due to such employee, less any amount actually paid to  
14 the employee, and for costs and such reasonable attorney's fees as may be allowed  
15 by the court.

16 116. As described above, Defendants enacted a policy and practice that  
17 deprived Plaintiff and Washington Class members compensation for all hours  
18 worked, including automatic time deductions for meal breaks not taken, missed  
19 rest breaks, and work duties performed "off-the-clock." As a result, Defendants  
20 failed to pay Plaintiff and Washington Class members all wages due in violation  
21 of RCW 49.46.090.

1           117. As a result of the unlawful acts by Defendants, Plaintiff and the  
2 Washington Class have been deprived of compensation in an amount to be  
3 determined at trial, together with attorney fees, costs and disbursements (RCW  
4 49.46.090; RCW 49.48.030), as well as pre- and post-judgment interest at the rate  
5 of 12% per annum (RCW 19.52.020).

6                           **FIFTH CLAIM FOR RELIEF**  
7                           **VIOLATIONS OF RCW 49.48.010**  
8                           **FAILURE TO PAY WAGES OWED AT TERMINATION**

9           118. Plaintiff incorporates all allegations contained in the foregoing  
10 paragraphs.

11           119. RCW 49.48.010 provides that “[w]hen any employee shall cease work  
12 for an employer, whether by discharge or by voluntary withdrawal, the wages due  
13 him on account of his employment shall be paid to him at the end of the  
14 established pay period.”

15           120. By the actions alleged above, Defendants have violated and continue  
16 to violate the provisions of RCW 49.48.010.

17           121. As a result of the unlawful acts of Defendants, Plaintiff and Class  
18 members have been deprived of compensation in amounts to be determined at trial  
19 and pursuant to RCW 49.48.030, Plaintiff and Class members are entitled to such  
20 damages, together with attorney fees, costs and disbursements, as well as pre- and  
21 post-judgment interest at the rate of 12% per annum (RCW 19.52.020).

**SIXTH CLAIM FOR RELIEF  
VIOLATIONS OF RCW 49.52.050  
WILLFUL REFUSAL TO PAY WAGES  
(WASHINGTON CLASS ACTION)**

122. Plaintiff incorporates all allegations contained in the foregoing paragraphs.

123. RCW 49.52.050(2) provides that any employer or agent of any employer who “[w]ilfully and with intent to deprive the employee of any part of his or her wages, shall pay any employee a lower wage than the wage such employer is obligated to pay such employee by any statute, ordinance, or contract” shall be guilty of a misdemeanor.

124. RCW 49.52.070 provides that any employer who violates the foregoing statute shall be liable in a civil action for twice the amount of wages withheld, together with costs of suit and reasonable attorneys’ fees.

125. An employer’s nonpayment of wages is willful and made with intent “when it is the result of knowing and intentional action and not the result of bona fide dispute as to the obligation of payment.” *Wingert v. Yellow Freight Sys., Inc.*, 146 Wash. 2d 841, 849 (2002) (quoting *Chelan Cnty. Deputy Sheriffs’ Ass’n v. Chelan County*, 109 Wash. 2d 282, 300 (1987)).

126. Defendants willfully failed to pay all wages owed to Plaintiff and the Washington Class, including minimum and overtime wages, by allowing Plaintiff and the Washington Class to work for Defendants’ benefit while “off-the-clock,”

1 by implementing an automatic time deduction policy and practice for meal periods  
2 that were subject to interruption, were not continuous, during which nursing staff  
3 were on duty, and during which nursing staff were not relieved of all duties during  
4 the meal period, and by requiring Plaintiff and Washington Class members to  
5 work through or be subject to interruption during their rest periods. Defendants  
6 knew or should have known that their employment policies violated Washington  
7 law, and their failure to pay wages owed to Plaintiff and the Washington Class  
8 was “willful” under RCW 49.52.050(2).

9 127. Because Defendants’ failure to pay wages owed was “willful,”  
10 Plaintiff and the Washington Class are entitled to exemplary damages under RCW  
11 49.52.070.

12 **SEVENTH CLAIM FOR RELIEF**  
13 **VIOLATION OF RCW 19.86**  
14 **WASHINGTON CONSUMER PROTECTION ACT**  
15 **(WASHINGTON CLASS ACTION)**

16 128. Plaintiff incorporates all allegations contained in the foregoing  
17 paragraphs.

18 129. RCW 19.86.020 provides that “[u]nfair methods of competition and  
19 unfair or deceptive acts or practices in the conduct of any trade or commerce are  
20 hereby declared unlawful.”

21 130. Defendants engaged in unfair or deceptive acts or practices and unfair  
methods of competition when they: (1) failed to pay Plaintiff and the Washington

1 Class members wages for off-the-clock work; (ii) prevented Plaintiff and the  
2 Washington Class from taking rest and meal breaks; (iii) failed to pay Plaintiff  
3 and the Washington Class for the periods during which their breaks were  
4 interrupted; (iv) failed to pay Plaintiff and the Washington Class for overtime  
5 worked; (v) violated RCW 49.46.020; (vi) violated WAC 296-126-023; and (vii)  
6 violated WAC 296-126-092.

7 131. Defendants' unfair or deceptive acts or practices and unfair methods  
8 of competition repeatedly occurred in Defendants' business, proximately caused  
9 injuries to Plaintiff and the Washington Class, and impacted the public interest  
10 because they injured other persons and had and have the capacity to injure other  
11 persons.

12 132. As a result of Defendants' unfair or deceptive acts or practices and  
13 unfair methods of competition, Plaintiff and the Washington Class are entitled,  
14 pursuant to RCW 19.86.090, to recover treble damages, reasonable attorneys'  
15 fees, and costs.

16 **PRAYER FOR RELIEF**

17 133. For these reasons, Plaintiff and Class and Collective members  
18 respectfully request that judgment be entered in their favor awarding the following  
19 relief:  
20  
21

- i. An order preventing Defendants from retaliating in any way against Plaintiff and any Class member who joins or elects not to opt-out of the present suit based on their pursuit of these claims alleged herein;
- ii. An order designating this action as a collective action on behalf of the Collective and issuance of notice pursuant to 29 U.S.C. § 216(b) to all similarly situated individuals;
- iii. An order finding that Defendants violated the FLSA;
- iv. An order finding Defendants' violated the FLSA willfully;
- v. All unpaid wages due under the FLSA;
- vi. An equal amount as liquidated damages as allowed under the FLSA;
- vii. Reasonable attorneys' fees, costs, interest, and expenses of this action as provided by the FLSA;
- viii. An order certifying this case as a Class Action under Rule 23 of the Federal Rules of Civil Procedure;
- ix. An order finding that Defendants violated Washington law;
- x. All unpaid regular wages due under Washington law to the extent same does not duplicate regular wages due under the FLSA;



- 1 xi. All unpaid overtime wages due under Washington law to the
- 2 extent same does not duplicate overtime wages due under
- 3 the FLSA;
- 4 xii. An award of exemplary damages as provided by
- 5 Washington law, to the extent same does not duplicate
- 6 liquidated damages due under the FLSA;
- 7 xiii. An award of treble damages as provided by Washington
- 8 law, to the extent same does not unduly overlap with other
- 9 amounts due;
- 10 xiv. All compensatory damages due under Washington law,
- 11 including lost wages, earnings, and other employee benefits,
- 12 restitution, and all other sums of money owed to Plaintiff
- 13 and Washington Class and Collective members, together
- 14 with interest on these amounts, according to proof;
- 15 xv. All attorneys' fees, costs and disbursements as provided by
- 16 Washington law;
- 17 xvi. Pre- and post-judgment interest in the amount of 12% per
- 18 annum as provided by Washington law; and
- 19 xvii. Such other and further relief as this Court deems just and
- 20 proper.
- 21

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury.

RESPECTFULLY SUBMITTED AND DATED this 3rd day of April, 2019.

TERRELL MARSHALL LAW GROUP PLLC

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